

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JESUS O. DUARTE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:18-cv-2079-GCS
)	
NATE McVICKER,)	
)	
Defendant.)	

MEMORANDUM & ORDER

SISON, Magistrate Judge:

Pending before the Court is Defendant McVicker's May 22, 2020 motion for summary judgment. (Doc. 34, 35).¹ As of this date, Plaintiff Jesus Duarte has not filed a response to the motion. The undersigned considers Duarte's failure to respond as an admission of the merits of the motions for summary judgment.

On November 16, 2018, Jesus O. Duarte brought this civil rights action *pro se* alleging that his Fourth and Fourteenth Amendment rights were violated by an unreasonable search and seizure during a traffic stop and that he was falsely arrested in

¹ Pursuant to Federal Rule of Civil Procedure 56, *Timms v. Frank*, 953 F.2d 281 (7th Cir. 1992) and *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982), the Court filed the required notice informing Duarte of the consequences of failing to respond to the motions for summary judgment. (Doc. 36).

December 2016. (Doc. 2). On April 15, 2019, the Court granted Duarte's motion to proceed in forma pauperis and allowed him to proceed with his claims of unlawful search, seizure, and false arrest in violation of the Fourth Amendment. (Doc. 7). Thereafter, on May 22, 2020, McVicker filed the motion for summary judgment arguing that he is entitled to summary judgment because he had probable cause to initiate the traffic stop; he had reasonable suspicion to call for a canine unit; and Duarte was only detained for approximately thirty-four minutes before the canine unit alerted to the presence or past presence of a narcotic order. As stated before, Duarte has not responded to the motion and the time to respond to the motion has passed. The Court considers Duarte's failure to respond as an admission of the merits of the motion filed by McVicker. *See* SDIL Local Rule 7.1(c); *Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003). *See also Flynn v. Sandahl*, 58 F.3d 283, 288 (7th Cir. 1995)(noting that a failure to respond constitutes an admission that there are no undisputed material facts).

Based on this admission, the Court finds that McVicker is entitled to summary judgment on Duarte's Fourth Amendment claims because McVicker had probable cause to initiate a traffic stop and a reasonable suspicion of criminal activity to call for a canine unit which did not unreasonably prolong the stop.

Accordingly, the Court **GRANTS** McVicker's motion for summary judgment (Doc. 34). Further, the Court **DIRECTS** the Clerk of the Court to enter judgment in favor of Nate McVicker and against Jesus O. Duarte. Duarte shall take noting from this case.

IT IS SO ORDERED.

Date: June 30, 2020.

 Digitally signed
by Judge Sison
Date:
2020.06.30
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GILBERT C. SISON
United States Magistrate Judge